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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/755,530	01/12/2004	Torsten Kuehn	1/1206-1-D1	1325
28501	7590	08/17/2004	EXAMINER	
BOEHRINGER INGELHEIM CORPORATION 900 RIDGEBURY ROAD P. O. BOX 368 RIDGEFIELD, CT 06877			ROGERS, DAVID A	
			ART UNIT	PAPER NUMBER
			2856	

DATE MAILED: 08/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/755,530	<b>Applicant(s)</b> KUEHN, TORSTEN <i>ck</i>	
	<b>Examiner</b> David A. Rogers	<b>Art Unit</b> 2856	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
  - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
  - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
  - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 12 January 2004.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 5-7 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 5-7 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |                                                                                                                                               |                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                                                   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                                          | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>20030301</u> . | 6) <input type="checkbox"/> Other: _____                                                |

## **DETAILED ACTION**

### ***Specification***

1. The specification is objected to for the following informalities:

It is recommended that the applicant rewrite page 1, lines 6-8 as follows:

This application is a division of United States Patent Application 10/152,182, filed 20 May 2002, and now United States Patent 6,698,270, which in turn claims priority to United States Provisional Application 60/291,876, filed 18 May 2001.

Finally, it is suggested that the applicant update page 2, line 20 as  
--WO 00/23037-- instead of --WP 00/23037--.

### ***Oath/Declaration***

2. The oath or declaration is defective. A new oath or declaration in compliance with 37 CFR 1.67(a) identifying this application by application number and filing date is required. See MPEP §§ 602.01 and 602.02.

The oath or declaration is defective because the claim for priority to provisional application 60/291876 shows a filing date of 18 May 2002 instead of the correct date of 18 May 2001.

### ***Claim Rejections - 35 U.S.C. § 102***

3. The following is a quotation of the appropriate paragraph of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claim 5 is rejected under 35 U.S.C. 102(b) as being anticipated by United States Patent 6,082,184 to Lehmann.

Lehmann discloses a test cavity (reference item 1) into which is placed a closed container (reference item 9). The closed container comprises a predetermined amount of liquid, as seen in figure 2. A vacuum pump (reference item 5) is connected to the test cavity in order to create a vacuum within the cavity. The internal cavity pressure is monitored using a pressure sensor (reference item 7). In use the container with the liquid is placed in the cavity, the cavity is sealed, and the pump is used to create a vacuum within the cavity. Should the closed container have a leak then the contained liquid will evaporate into the cavity thus increasing the pressure within the cavity which will be indicated by the pressure sensor.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent 6,082,184 to Lehmann in view of Japanese Laid-Open Patent Application Publication JP 09323774A to Yoshiga.

Lehmann teaches that it is known to test small, closed containers such as blister packs, vials, medical application containers, and food/beverage containers. Lehmann does not expressly teach the testing of a closed container comprising polyamide. Yoshiga teaches that it is known to create small, closed polyamide-containing containers for holding liquids, i.e. aerosol containers. Performing a leak test on a closed container such as those taught by Yoshiga would help ensure that those specific containers were produced in an airtight manner, i.e. did not have manufacturing defects prior to shipping and/or use.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lehmann with the teachings of Yoshiga in order to perform leak testing of a closed container comprising polyamide.

7. Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent 6,082,184 to Lehmann in view of United States Patent 5,152,411 to Pope *et al.*

Lehmann teaches that it is known to test small, closed containers such as blister packs, vials, medical application containers, and food/beverage containers. Lehmann does not expressly teach the testing of a closed container comprising polyoxymethylene. Pope *et al.* teaches that it is known to create small, closed container for holding liquids, i.e. aerosol containers, that comprise polyoxymethylene. Performing a leak test on a closed container such as those taught by Pope *et al.* would help ensure that those specific containers

were produced in an airtight manner, i.e. did not have manufacturing defects prior to shipping and/or use.

It would have been obvious to one of ordinary skill in the art at the time of the invention to modify the teachings of Lehmann with the teachings of Pope *et al.* in order to perform leak testing of a closed container comprising polyoxymethylene.


### **Conclusion**

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David A. Rogers whose telephone number is (571) 272-2205. The examiner can normally be reached on Monday - Friday (0730 - 1600).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on (571) 272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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05 August 2004

  
HEZRON WILLIAMS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 2800